IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 16831 of 2007(D)

AGAINST THE ORDER DATED 14/12/2006 IN IA.3156/2006 IN OS.662/2001 of SUB COURT, ERNAKULAM

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PETITIONER:

RUFUS OLIVRO, S/O.FRANCIS OLIVRO,
VADAKKE THAXHUPPI PARAMBIL HOUSE,
CHERANALLOOR VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DIST.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENTS:

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1. M/S.SAKTHI FINANCE LTD, REPRESENTED BY
ITS GENERAL MANAGER (ADVANCES)
MR.V.KURAMAGURUNATHAN, SAHODARAN AYYAPPAN ROAD,
PALLIMUKKU, KOCHI-16.

2. UNITED INDIA INSURANCE CO. LTD.,
REPRESENTED BY ITS DIVISIONAL MANAGER,
DIVIAIONAL OFFICE, NO.II. JOYS BUILDING, ERNAKULAM, KOCHI-35.

3. SMT.GEETHA UDAYAN, REVATHI,
PALARIVATTOM, EDAPPALLY, SOUTH VILLAGE,ERNAKULAM.

4. ANSARI, KURIKODE HOUSE,
KAKKANAD NOW RESIDING AT MADATHIPARAMBIL HOUSE,
NEAR T.V.STATION, KAKKANAD, ERNAKULAM.

BY ADV. SRI.SHEEJO CHACKO
SRI.M.N.MANOJ
SRI.PRASANTH K.DIVAKARAN
SRI.T.GOPALAKRISHNAN
SRI.T.J.LAKSHMANAN IYER
SRI.P.M.ZIRAJ
SRI.P.B.ASOKAN,SRI.R.VINU RAJ,SRI.M.VENUGOPALAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts.

Ext.P1 true copy of plaint in OS 662/2001 Sub Court, Ernakulam.

Ext.P2 true copy of written statement filed by 1st defendant in OS 662/01 Sub Court, Ernakulam.

Ext.P3 true copy of order in IA 4410/2005 Sub Court, Ernakulam.

Ext.P4 true copy of affidavit and petition in IA 3156/06 in OS 662/01 filed by petitioner before Sub Court, Ernakulam.

Ext.P5 true copy of order in IA 3156/06 in OS 662/01 sub Court, Ernakulam dated 14.12.06

M.N.Krishnan, J.

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W.P(C).No.16831 of 2007

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Dated this the 6th day of December, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Subordinate Judge, Ernakulam in I.A.Nos.4408 and 4410 of 2005 in O.S.No.662 of 2001. Brief facts necessary for the disposal of the Writ Petition are as follows:

2. Plaintiff has instituted the suit against the first defendant for realisation of the amount due under a hire purchase agreement on the ground that there has been default. The first judgment debtor entered appearance and inter alia along with the other contentions submitted that with the consent of the United India Insurance Company there has been a transfer of the vehicle in favour of one Geetha Udayan, who in turn had sold the vehicle to one Anzari. From Anzari, the vehicle had been stolen. Accordingly, invoking the power under Order 8A of C.P.C. which deals with third party proceedings notices had been issued and they had entered appearance.

3. Grievance of the writ petitioner is that the court is not expected to have a full pledged enquiry under Order 8A Rule5 of C.P.C. for the reason that what is contemplated is only that the court had to consider whether there is a question to be tried as to the liability of the third party to make contribution or indemnity claim etc. The contention of the petitioner appears to be that as the vehicle has been insured for all purposes, the Insurance Company is bound to indemnify him and further that since it is a transfer made by the petitioner with the consent of the Insurance Company, the Insurance Company is bound by the terms of the contract and so far as against the other persons are concerned, as they were in possession of the properly, namely, the vehicle, they are also liable to contribute.

4. The main question to be decided will be regarding the liability to indemnify by the Insurance Company which requires a detailed enquiry by the court and it cannot be decided on prima facie materials. Similarly, the junction of two other persons is also necessary to prove the transfer and consider the question whether there will be deemed transfer under Section 157(2) of the Motor Vehicles Act and it will have bearing on the facts of the

case. These are all matters which can be done only after trial and in this case it is desirable that the matter is tried taking into consideration of these issues. Therefore, I find that at this stage, there are prima facie materials to show that there is a question to be tried as to the liability of the third parties and therefore further procedure contemplated under third party procedure Order 8 Rule 8A of C.P.C. has to be followed by the court in determining the matter.

5. Therefore, the order under challenge is set aside and the court below is directed to proceed as mentioned above. Further, the contention of the counsel for the plaintiff that he is put to hardship is true. Therefore, the court below shall bestow its best attention to see that an expeditious disposal of the matter is done, at the same time, by giving all concerned to put forward their contentions.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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